Remarks

A 1st Office Action issued over a year ago in relation to the subject application erroneously relied upon (and incorrectly identified) U.S. Patent 6,730,570 to Shin et al. Applicants clearly pointed out this error in their response.

Undeterred by the facts, the examiner issued a 2nd Office Action relying on Shin et al. and made it final. This bit of expertise then required applicants to make a second response reiterating, amongst other points, the facts that Shin et al. was not a reference and that certain pending claims had yet to be even facially examined.

Applicants now express gratitude for the examiner's belated recognition of these facts and the withdrawal of the 2nd Office Action.

Unfortunately, a third (non-final) Office Action has now been issued.

This third Office Action again postulates an absurd collection of nearly random references - each secondary reference disclosing some feature or material bearing, perhaps, a passing resemblance to some element or method step recited in the pending claims. The examiner's willingness to go about collecting *any* reference *anywhere* in the entire field of semiconductors, cherry pick some out-of context fabrication detail or general material usage, and cobble it together with a string of similar documents - without a shred of explanation regarding "motivation to combine under 35 U.S.C. 103" - is truly chilling.

The present collection of disparate documents and their attribution to the pending claims read as follows:

In an Office Action dated September 20, 2006, claims 1-3, 5-8, 10, 12, 20, and 21 were rejected under 35 U.S.C. § 103 as being obvious over U.S. Patent 5,871,562 to Chang et al. (hereafter, "Chang") in view of U.S. Patent 6,162,737 to Weimer et al. (hereafter, "Weimer"), and U.S. Patent 5,565,384 to Havemann (hereafter, "Havemann"), and further in view of U.S. Patent 6,806,549 to Tomita (hereafter, "Tomita"). Claim 9 was rejected as being obvious over Chang in view of Weimer, Havemann, and Tomita, and further in view of U.S. Patent 6,479,341 to Lu (hereafter, "Lu"). Claim 13 was rejected as being obvious over Chang in view of Weimer, Havemann, and Tomita. Claims 14-15 were rejected as being obvious over Chang in view of Weimer, Havemann, and Tomita. Claims 16-19 were rejected as being obvious over Chang in view of

Weimer, Havemann, and Tomita, and further in view of published U.S. Patent Application 2002/0064968 to Kim et al. (hereafter, "Kim").

In response to these rejections, applicants have canceled claims 6 and 7, amended claims 1-3 and 5. So, claims 1-3, 5, 8-10, and 12-21 remain pending for consideration.

Setting aside for the moment the inappropriate and unsubstantiated combination of references, applicants note that amended claim 1 now (like previously presented claim 21) expressly recites, "sequentially forming a buffer layer and an etch stop layer over the source region, the drain region and the gate to obtain an intermediate structure." The primary reference, Chang, clearly fails to suggest or disclose the formation of this "intermediate structure". Quite to the contrary, the device shown in Chang includes only a partially formed buffer layer 24 covering only source and drains, but NOT the gate. (See, Chang at FIG. 4, for example). As a result, the alleged etch stop layer 30 in Chang is formed directly on (and subsequently etched directly from) components of the gate structure including hard mask 20 and sidewalls 26, 28. These components are thus directly exposed to the potentially stressing effects of the wet etch used to remove the etch stop layer 30. The claimed invention, as recited in amended independent claim 1 and previously presented independent claim 21, is distinct from Chang. The other references of record fail to suggest or disclose any subject matter that remedies this critical omission from Chang.

Of note, pending claim 21 has NOT been amended. <u>It expressly recited the above emphasized relationships and should have been allowed over the art of record</u>.

Additionally, Weimer does not teach "wet etching the etch stop layer to remove the etch stop layer over the source region, the drain region and the sidewall spacers" as recited in claim 1. Instead, a closer reading of Weimer reveals processing that includes a silicon nitride etch after the selective etch to expose the etch stop layer. (Contra, page 5 of the Office Action). That is, in Weimer the processing includes a silicon nitride etch, (e.g., a hot phosphoric acid etch), which is performed after etching of the etch stop layer.

The pending claims as currently presented are allowable over the art of record and in condition for allowance.

Respectfully submitted,

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